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UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 THOMAS VINCENT GIRARDI,

17 Defendant.

No. CR 23-47-JLS-1

PROPOSED JURY INSTRUCTION ON
ATTORNEY'S DUTIES

Hearing Date: August 6, 2024

Hearing Time: 9:00 a.m.

Location: Courtroom of the
Hon. Josephine L.
Staton

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20 Plaintiff United States of America, by and through its counsel
21 of record, the United States Attorney for the Central District of
22 California and Assistant United States Attorneys Scott Paetty and Ali
23 Moghaddas, and defendant Thomas Vincent Girardi, by and through his
24 counsel of record Charles Snyder, Alejandro Barrientos, and Sam
25 Cross, hereby submit this Proposed Jury Instruction regarding an
26 attorney's duties in the above-captioned case.

27 Defendant Girardi maintains his objection to this instruction in
28 its entirety. However, in the event the Court determines that an

1 instruction on attorney's duties will be given, defendant Girardi
2 proposes the cautionary admonitions included below. Defendant
3 Girardi also believes that the instruction should incorporate the
4 following concepts and asks that he be given an opportunity to make
5 further argument on the topic:

6 a. A lawyer can satisfy these duties through his or her
7 agents, including other people in his or her law firm;

8 b. What constitutes a prompt payment and when a client is
9 entitled to money depend on the circumstances.

10 The government has no objection to defendant Girardi's
11 additional cautionary admonishments included below; however, it
12 objects to defendant's above request for instructions on purported
13 delegation of duties and/or what constitutes "prompt payment," for

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1 which he provides no authority. Rather, the government believes that
2 defendant can argue these theories at trial.

3 Dated: August 5, 2024

Respectfully submitted,

4 E. MARTIN ESTRADA
United States Attorney

5 MACK E. JENKINS
6 Assistant United States Attorney
7 Chief, Criminal Division

8 /s/

9 SCOTT PAETTY
ALI MOGHADDAS
Assistant United States Attorney

10 Attorneys for Plaintiff
11 UNITED STATES OF AMERICA
12
13

14 Dated: August 5, 2024

/s/ with email authorization

15 CHARLES SNYDER
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17 Attorneys for Defendant
THOMAS VINCENT GIRARDI
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1 **JOINT PROPOSED INSTRUCTION ON DUTIES OF AN ATTORNEY¹**

2 **I. Lawyers' Ethical Duties Under California Law**

3 The government charges the defendant with engaging in a scheme
4 to defraud his legal clients. Because the defendant was a licensed
5 member of the State Bar of California at all times relevant to the
6 charges in this case, the ethical duties that the defendant owed to
7 his legal clients are determined by California law. You should keep
8 in mind that proof that the defendant failed to comply with the rules
9 governing a lawyer's duties, including receipt of client funds and/or
10 the use of attorney-client trust accounts, does not, by itself, mean
11 that the defendant is guilty of the charged offenses of wire fraud.
12 Ultimately, you will be asked to determine whether the defendant
13 violated the law-not whether he violated his ethical obligations.
14 You may, however, consider whether the defendant failed to comply
15 with the rules governing the receipt of client funds and use of
16 attorney-client trust accounts when evaluating whether the government
17 has proven the elements of the offense, including whether the
18 defendant engaged in a scheme to defraud, whether the statements made
19 or facts omitted as part of the scheme were material, whether the
20 defendant acted with the intent to defraud, and whether the defendant
21 had a duty to disclose an omitted fact arising out of a relationship
22 of trust.

23 During the relevant time period, California law imposed the
24 following duties on lawyers licensed to practice in California,
25 including the defendant:
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¹ Defendant Girardi objects to this instruction in its entirety.

1 1. A lawyer owed a fiduciary duty and a duty of loyalty to his
2 clients.

3 2. A lawyer could not act in a manner that would materially
4 disadvantage his clients. A lawyer also could not subrogate his duty
5 of loyalty to one client in favor of his own interests or the
6 interests of other clients or third parties.

7 3. A lawyer owed a duty of honesty and fair dealing to his
8 clients. A lawyer had a duty to keep clients informed of significant
9 developments in the matter in which the lawyer was representing the
10 clients. To ensure that a client could make an informed decision, a
11 lawyer was required to provide his clients with true and accurate
12 information. A lawyer could not withhold material information from
13 or mislead his clients.

14 Additionally, under California law, a lawyer was required to
15 enter into written contracts with his clients setting forth the scope
16 of the representations, as well as any arrangements regarding the
17 payment of attorneys' fees and costs.

18 You should keep in mind that proof that the defendant violated
19 one or more of the duties he owed his clients under California law
20 alone is insufficient to find that the defendant is guilty of the
21 charged offenses. You may, however, consider this evidence when
22 evaluating whether the government has proven the elements of the
23 charged offenses, including whether the defendant engaged in a scheme
24 to defraud, whether the statements made or facts omitted as part of
25 the scheme were material, and whether the defendant acted with the
26 intent to defraud. I remind you that ultimately, you will be asked
27 to determine whether the defendant violated the law-not whether he
28 violated his ethical obligations. It is possible that the defendant

1 may have violated an ethical obligation or committed legal practice
2 but not have committed a crime.

3 **II. Attorney-Client Trust Accounts**

4 At all times relevant to the charges in this case, the
5 California Rules of Professional Conduct contained specific rules
6 governing a lawyer's receipt of client funds and the use of attorney-
7 client trust accounts. An "attorney-client trust account" was a bank
8 account that lawyers were required to use to maintain client funds.
9 The purpose of an attorney-client trust account was to protect the
10 funds of a lawyer's clients. Under California law, a bank or
11 financial institution which is a depository for an attorney-client
12 trust account must report to the California State Bar any instance in
13 which a client-trust account is overdrawn or has insufficient funds
14 to cover a check written from the account.

15 The following rules applied to a lawyer's financial relationship
16 with his clients and the use of attorney-client trust accounts:

17 1. A lawyer was required to deposit into an attorney-client
18 trust account any money received or held for the benefit of a client,
19 including settlement proceeds and advances for costs and expenses.

20 2. A lawyer was required to promptly notify his clients of the
21 receipt of a client's settlement funds and the amount of funds
22 received.

23 3. A lawyer was required to maintain records of all funds held
24 or received on behalf of his clients and maintained in an attorney-
25 client trust account.

26 4. A lawyer was required to provide to his clients an
27 accounting of any funds the lawyer or his law firm held or received
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1 on behalf of their clients, as well as any fees, costs, or other
2 expenses deducted from the payments made to or on behalf the clients.

3 5. A lawyer was required to promptly pay to his clients any
4 funds the lawyer or his law firm received on the clients' behalf and
5 to which the client was entitled.

6 6. Funds belonging to an attorney or a law firm were not
7 allowed to be deposited into an attorney-client trust account.
8 Commingling attorney funds with client funds was prohibited, unless
9 one of the following two exceptions applied:

10 a. Funds reasonably sufficient to pay bank charges; or

11 b. In the case of funds belonging in part to a client and
12 in part presently or potentially to the attorney or law firm, the
13 portion belonging to the lawyer or law firm must be withdrawn at the
14 earliest reasonable time after the attorney's interest in that
15 portion becomes fixed.

16 7. To the extent there was a dispute regarding the payment of
17 any client funds maintained in an attorney-client trust account, a
18 lawyer was required to maintain the disputed amounts in the attorney-
19 client trust account until such dispute was resolved.

20 You should keep in mind that proof that the defendant violated
21 one or more of the rules governing a lawyer's receipt of client funds
22 and/or the use of attorney-client trust accounts alone is
23 insufficient to find that the defendant is guilty of the charged
24 offenses. You may, however, consider this evidence when evaluating
25 whether the government has proven the elements of the charged
26 offenses, including whether the defendant engaged in a scheme to
27 defraud, whether the statements made or facts omitted as part of the
28

1 scheme were material, and whether the defendant acted with the intent
2 to defraud.

3 I remind you that ultimately, you will be asked to determine
4 whether the defendant violated the law-not whether he violated his
5 ethical obligations. It is possible that the defendant may have
6 violated an ethical obligation or committed legal practice but not
7 have committed a crime.